



Senate

General Assembly

File No. 195

January Session, 2001

Substitute Senate Bill No. 1055

Senate, April 10, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROBATE STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-341 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) (1) An inventory of all the property of every deceased person
4 and insolvent debtor, except real property situated outside the state,
5 duly appraised, shall be made and signed under penalty of false
6 statement by the fiduciary.

7 (2) When any personal property of a deceased person or insolvent
8 debtor is outside of this state the court may receive an inventory of
9 such property, accompanied by such evidence of its value as it deems
10 sufficient and signed under penalty of false statement by the fiduciary.

11 (3) The inventory and appraisal of the estate of any deceased
12 nonresident shall include only such interest as the decedent had at the
13 time of his or her death in the real property and tangible personal

14 property situated in this state and intangible personal property,
15 provided intangible personal property shall not be included if the
16 proceeding in this state with regard to such estate is ancillary to a
17 proceeding in another jurisdiction.

18 (4) The fiduciary shall appraise or cause to be appraised such
19 inventoried property at its fair market value.

20 (b) (1) The fiduciary shall file the inventory in the court of probate
21 having jurisdiction of the estate of the deceased person or insolvent
22 debtor within two months after the acceptance of the bond or other
23 qualification of the fiduciary.

24 (2) The court may, for cause shown, extend the time for the filing of
25 such inventory to not more than four months from the qualification of
26 the fiduciary.

27 (c) If the court grants administration of a decedent's estate to a
28 person other than (1) the person designated in the will as executor or
29 successor to such executor, (2) the surviving spouse, (3) any child of
30 the decedent or any guardian of such child as the court shall
31 determine, (4) any grandchild of the decedent or any guardian of such
32 grandchild as the court shall determine, (5) the decedent's parents, (6)
33 any brother or sister of the decedent, or (7) the next of kin entitled to
34 share in the estate, the fiduciary appointed by the court shall file an
35 inventory as required by this section prior to the sale, either under a
36 power in the will or under the laws of this state, of any property other
37 than real estate; except that if the fiduciary appointed is a state bank
38 and trust company or national banking association authorized to do
39 business in this state, such fiduciary shall not be required to file such
40 an inventory of intangible personal property prior to sale. The
41 fiduciary shall send a copy of such inventory to each person interested
42 in the estate and shall notify each such person by regular mail, that a
43 sale of certain items in the inventory is contemplated. Such notice shall
44 inform the recipient that he or she may object to such sale by filing a

45 notice of objection in writing with the court of probate having
46 jurisdiction of the estate of the decedent within five days after receipt
47 of such notice of sale. Upon receipt of such notice of objection, the
48 court shall set a time and place for a hearing, with notice to all persons
49 interested in the estate.

50 (d) Notwithstanding the provisions of subsection (c) of this section,
51 upon application by the fiduciary, the court may order a sale of
52 personal property without a hearing prior to the filing of an inventory
53 and notice of sale, provided the court finds that an expeditious sale is
54 necessary for the protection of the estate and a delay would cause
55 irreparable harm to the estate.

56 (e) The fiduciary shall file an inventory containing a legal
57 description of any real estate of the decedent prior to a sale pursuant to
58 sections 45a-162 to 45a-169, inclusive, and sections 45a-427 and
59 45a-428.

60 [(f) The fiduciary shall file a return of sale with the court after any
61 sale of real estate or personal property of the decedent.]

62 Sec. 2. Subsection (a) of section 45a-649 of the general statutes is
63 repealed and the following is substituted in lieu thereof:

64 (a) Upon an application for involuntary representation, the court
65 shall issue a citation to the following enumerated parties to appear
66 before it at a time and place named in the citation, which shall be
67 served on the parties at least seven days before the hearing date, which
68 date shall not be more than thirty days after the receipt of the
69 application by the Court of Probate unless continued for cause shown.
70 Notice of the hearing shall be sent within thirty days after receipt of
71 the application. (1) The court shall direct that personal service be
72 made, by a state marshal, constable or an indifferent person, upon the
73 following: (A) The respondent, except that if the court finds personal
74 service on the respondent would be detrimental to the health or

75 welfare of the respondent, the court may order that such service be
76 made upon counsel for the respondent, if any, and if none, upon the
77 attorney appointed under subsection (b) of this section; (B) the
78 respondent's spouse, if any, if the spouse is not the applicant, except
79 that in cases where the application is for involuntary representation
80 pursuant to section 17b-456, and there is no spouse, the court shall
81 order notice by certified mail to the children of the respondent and if
82 none, the parents of the respondent and if none, the brothers and
83 sisters of the respondent or their representatives, and if none, the next
84 of kin of such respondent. (2) The court shall order such notice as it
85 directs to the following: (A) The applicant; (B) the person in charge of
86 welfare in the town where the respondent is domiciled or resident and
87 if there is no such person, the first selectman or chief executive officer
88 of the town if the respondent is receiving assistance from the town; (C)
89 the Commissioner of Social Services, if the respondent is in a state-
90 operated institution or receiving aid, care or assistance from the state;
91 (D) [by registered or certified mail, to] the Administrator of Veterans
92 Affairs if the respondent is receiving veterans' benefits or the Veterans
93 Home and Hospital, or both, if the respondent is receiving aid or care
94 from such hospital, or both; (E) the Commissioner of Administrative
95 Services, if the respondent is receiving aid or care from the state; (F)
96 the children of the respondent and if none, the parents of the
97 respondent and if none, the brothers and sisters of the respondent or
98 their representatives; (G) the person in charge of the hospital, nursing
99 home or some other institution, if the respondent is in a hospital,
100 nursing home or some other institution. (3) The court, in its discretion,
101 may order such notice as it directs to other persons having an interest
102 in the respondent and to such persons the respondent requests be
103 notified.

104 Sec. 3. Subsection (j) of section 45a-82 of the general statutes is
105 repealed and the following is substituted in lieu thereof:

106 (j) In the event that any court of probate otherwise receives income

107 which is insufficient to meet, on an ongoing basis, the reasonable and
108 necessary financial needs of that court, including the salaries of the
109 judge and the judge's staff, there shall be transferred from time to time
110 from the Probate Court Administration Fund such amounts as are
111 determined by the Probate Court Administrator to be reasonable and
112 necessary for the proper administration of each such court. Except as
113 provided in subsection (k) of section 45a-92, the judge's annual salary
114 shall not exceed the average annual salary of such judge for the three-
115 year period next preceding the request for financial assistance or the
116 product resulting from the multiplication of fifteen dollars by the
117 annual weighted-workload of the court, as defined in subsection (c) of
118 section 45a-92, whichever is greater, but not to exceed the annual
119 compensation provided in subsection (k) of section 45a-92.

120 Sec. 4. Section 45a-139 of the general statutes is repealed and the
121 following is substituted in lieu thereof:

122 (a) As used in this title, except as otherwise provided, "bond" or
123 "probate bond" means a bond with security given to secure the faithful
124 performance by an appointed fiduciary of the duties of [his] the
125 fiduciary's trust and the administration of and accounting for all
126 moneys and other property coming into [his] the fiduciary's hands, as
127 fiduciary, according to law.

128 (b) Except as otherwise provided, every bond or probate bond shall
129 be payable to the state, shall be conditioned for the faithful
130 performance by the principal in the bond of the duties of [his] the
131 principal's trust and the administration of and accounting for all
132 moneys and other property coming into [his] the principal's hands, as
133 fiduciary, according to law, and shall be in such amount and with such
134 security as shall be required by the judge of probate having jurisdiction
135 pursuant to rules prescribed by the Supreme Court. If bond is required
136 of a fiduciary, [his] the fiduciary's appointment shall not be effective
137 until the bond has been accepted by the Court of Probate.

138 (c) A probate judge may waive the requirement of a bond if the
139 assets of the estate are less than twenty thousand dollars, or if the
140 amount of the estate which is not restricted by probate court order is
141 less than ten thousand dollars.

Statement of Legislative Commissioners:

Gender neutral changes were made in section 4 and subsection (c) of section 4 was rewritten for clarity.

JUD JOINT FAVORABLE SUBST.-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost (Probate Court Administration Fund)

Affected Agencies: Probate Court (Judicial Department)

Municipal Impact: None

Explanation

Passage of the bill would result in a cost to the Probate Court Administration Fund (PCAF) of \$40,000 - \$70,000 per year. All probate court expenditures are paid for from the PCAF, which is a non-General Fund account. The fund balance as of June 30, 2000 was \$22 million. Furthermore in FY 00, PCAF revenues exceeded expenditures by approximately \$4 million.

The bill allows funds to be transferred to individual probate courts in the event that the income that a court receives is not sufficient to cover its needs. This includes the salaries of judges and staff. It is anticipated that 3 to 4 of the lower volume courts will potentially be impacted by the passage of the bill.

OLR Bill Analysis

sSB 1055

AN ACT CONCERNING THE PROBATE STATUTES.**SUMMARY:**

This bill eliminates the requirement that an executor or administrator file a “return of sale” with the probate court after he sells any of a decedent’s property. (This document shows the property that was sold or mortgaged and the sale price or amount of the mortgage.)

By law, the probate court must notify certain people and institutions when an application has been filed with it to hold a hearing to decide whether to appoint a conservator for someone because he cannot manage his affairs or care for himself. The bill eliminates the requirement that the probate court use registered or certified mail to notify the administrator of Veterans Affairs’ Department or the Veterans’ Home and Hospital of the hearing.

The bill allows a probate court judge to waive the requirement that a fiduciary obtain a bond to secure the faithful performance of his duties if the estate assets are less than \$20,000 or the value of the estate that the fiduciary has access to and authority over is less than \$10,000. (Under probate court rules, in appropriate circumstances, the court can limit the fiduciary’s access or authority over certain estate assets as an alternative to a bond.)

By law, the probate court administrator may transfer to a probate court amounts from the Probate Court Administration Fund if the income that court receives is insufficient to meet its needs, including the salaries of judges and their staff. But under current law, the judge’s annual salary may not exceed his average annual salary for the prior three years. The bill allows the judge’s salary to be higher by placing the limit at either the three-year average figure or the amount that results from multiplying the court’s annual weighted-workload by \$15, whichever is greater. Under existing law, unchanged by the bill, a

probate court judge's salary may not exceed 75% of the annual salary of a Superior Court judge. (A Superior Court judge currently earns \$116,000.)

EFFECTIVE DATE: October 1,2001

BACKGROUND

Annual Weighted Workload

The law requires the probate court administrator, by regulation, to assess a weight for each type of case the probate court handles, based on complexity. For example, under current regulations, a name change has a weight of one, civil commitment of someone with mental illness has a weight of five, and termination of parental rights has a weight of five. The annual weighted workload is the product resulting from multiplying the number of cases a court handles in each category during a calendar year by a whole number from one to five. The whole number for each category is set forth in the Appendix to the Regulation. The probate court administrator may modify it by regulation.

Executor and Administrator

An executor is the person designated in a will to administer the deceased person's estate in accordance with the will. An administrator is the person the probate court appoints to administer a decedent's estate when there is no will or the named executor is unwilling or unable to serve.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 33 Nay 0